

Hearing:
August 6, 1998

Paper No. 18
JQ

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JUNE 3, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Simple Technology, Inc.

Serial No. 74/651,896

Jeffrey L. Van Hoosear and Steven Nataupsky of Knobbe,
Martens, Olson & Bear for applicant.

Angela Lykos, Trademark Examining Attorney, Law Office 102
(Thomas Shaw, Managing Attorney).

Before Quinn, Hohein and Chapman, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Simple Technology,
Inc. to register the mark IC TOWER for "computer memory
modules and computer software for operating computer memory
modules and user manuals sold therewith" (International
Class 9) and "user manuals and brochures for use in

connection with computer memory modules" (International Class 16).¹

The Examining Attorney has refused registration under Section 2(e)(1) of the Trademark Act on the ground that applicant's mark, if used in connection with applicant's goods, would be merely descriptive thereof.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs on the case.² Both appeared at an oral hearing held before the Board.

Applicant contends, in urging that the refusal be reversed, that while the individual terms of its mark may have particular meaning in the computer industry, the combination of the terms results in a mark that is only suggestive of applicant's modules and software. More

¹ Application Serial No. 74/651,896, filed March 27, 1995, alleging a bona fide intention to use the mark in commerce.

² Applicant, in its appeal brief, included a list of fourteen third-party registrations of marks which include the term "tower." The Examining Attorney, in her brief, objected to this evidence, asserting that third-party registrations may not be made of record by merely listing them, and that, in any event, the submission is untimely.

The objection is not well taken in the particular circumstances of this appeal. The problem here is that applicant, in its response filed February 26, 1996, listed the registrations, and the Examining Attorney, in her Office action dated September 16, 1996, did not raise any objection at that time. Thus, the Examining Attorney essentially waived the objection, and we have considered the registrations as if properly of record (that is, as if soft copies of the registrations were submitted prior to the appeal).

specifically with respect to the term "tower," applicant contends that although the term has a particular meaning in the computer industry, that meaning pertains only to a type of configuration for computer hardware, and thus the term does not have a particular meaning with respect to applicant's goods. Applicant's position is that "it has taken a term (tower) and used it outside of its normal meaning (within the computer industry) to suggest a feature of the product." (reply brief, p. 3) The proposed mark, according to applicant, "suggests to consumers that the integrated chips could be in the form of a tower--a meaning that will require additional reasoning to understand how the chips are placed and operate in such a configuration." (brief, p. 13) Applicant also argues that each term in its mark has multiple meanings and that, therefore, the mark as a whole does not immediately convey information about the goods. In arguing that its mark is only suggestive, applicant points to the issuance of third-party registrations of marks which include the term "tower."

The Examining Attorney maintains that the mark sought to be registered merely describes a significant feature of applicant's goods, namely that the memory modules are composed of integrated circuit chips placed in a tower configuration. The Examining Attorney submitted listings

from various dictionaries, and excerpts from printed publications.

It is well settled that a term is considered to be merely descriptive of goods, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods for which registration is sought. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

As shown by the dictionary evidence of record, the abbreviation "IC" means "integrated circuit" or "integrated chip." The term "tower" appears in computer dictionaries as meaning "a name for a personal computer in a vertical or upright case." More importantly, for purposes of this appeal, the term "tower" is defined in a general dictionary

as "any structure, contrivance, or object that resembles or suggests a tower."

The NEXIS evidence includes the following excerpts:

The new IC Tower technology consists of four 16M DRAM chips that are placed in a patented "stacked tower" configuration. The "tower" is then the equivalent of a 64M DRAM chip...And, when 64M DRAM chips do become cost effective, the same IC Tower technology can be used to create a 256M tower.
Electronic News, July 1, 1996

The IC Tower uses four standard 16-Mbit DRAM chips that are placed in a stacked tower, forming the equivalent of a 64-Mbit DRAM chip. When these towers are placed on a memory module, the IC Tower technology can increase the capacity of one single-in-line memory module up to 128 Mbytes, four times the capacity of a traditional SIMM...When 64-Mbit DRAM chips become cost-effective, the same IC Tower technology can be used to create a 256-Mbit tower, according to Simple Technology.
Electronic Buyers' News, June 24, 1996

The evidence of record convinces us that the Examining Attorney is correct in stating that the mark IC TOWER merely describes integrated circuit chip memory modules stacked in a tower configuration. The individual terms do not lose their descriptiveness when combined, and the mark, when considered as a whole, is merely descriptive. There is nothing unique or incongruous about the combination. Relevant consumers in the computer field, undoubtedly

sophisticated for the most part, would readily understand the mark IC TOWER, when applied to applicant's goods, as referring to a significant characteristic or feature of the goods. That applicant may be the only user of IC TOWER is not determinative where the term sought to be registered has a merely descriptive connotation. In re Eden Foods Inc., 24 USPQ2d 1757, 1761 (TTAB 1992).

The third-party registrations do not compel a different result. Our task in this appeal is to determine, based on the record before us, whether applicant's mark is merely descriptive. As often noted by the Board, each case must be determined on its own set of facts. We obviously are not privy to the records involved in the cited registrations and, moreover, the determination of registrability of a particular mark by the Office cannot control the result in another case involving a different mark for different goods.

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Decision: The refusal to register is affirmed.

T. J. Quinn

G. D. Hohein

B. A. Chapman
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

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